[Cite as *State v. Arrington*, 2023-Ohio-2606.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	
Appellee	:	C.A. No. 29676
	:	
v.	:	Trial Court Case Nos.
	:	2021CRB00159W; 2021CRB00431W;
WAYNE L. ARRINGTON III	:	2022CRB00534W
	:	
Appellant	:	(Criminal Appeal from Municipal Court)
	:	

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O P I N I O N

Rendered on July 28, 2023

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THOMAS R. SCHIFF, Attorney for Appellee

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WELBAUM, P.J.

{¶ 1} Jeff Brown Bail Bonds ("Brown") appeals from a $10,000 judgment awarded against Brown on a forfeited recognizance bond. According to Brown, the trial court erred in imposing the judgment because the defendant, Wayne L. Arrington III, was produced within 60 days after he failed to appear in court. Brown further contends that

the trial court incorrectly prohibited it from executing bonds in Ohio because the statutory section the trial court referenced, R.C. 3905.932(J), only prohibits sureties from executing bonds in the state on their own behalf.

{¶ 2} After reviewing the record, we conclude that the trial court abused its discretion in rendering the judgment against Brown. Under R.C. 2937.36(C), production of the body of the defendant on the date or dates specified in the notice of default and adjudication of forfeiture constitutes a showing of good cause why judgment should not be entered against each surety of the defendant. Here, before the show cause hearing occurred, Arrington had appeared in court, and entry of a forfeiture judgment when the defendant has appeared prior to the noticed show cause date constitutes an abuse of discretion. Accordingly, Brown's sole assignment of error will be sustained. The judgment of the trial court will be reversed, and the matter will be remanded with instructions to vacate the judgment and award against Brown.

I. Facts and Course of Proceedings

{¶ 3} The background of this appeal involves three municipal court cases. In the first, a complaint was filed in the Municipal Court of Montgomery County, Ohio, on February 17, 2021, accusing Arrington of having committed domestic violence against E.T. The case was designated as Montgomery M.C. No. 2021 CRB 159W, and involved a violation of R.C. 2921.25, a first-degree misdemeanor. After appearing for arraignment on March 10, 2021, Arrington was released without bond, with orders to comply with pre-trial services and to have no contact with the victim. Counsel was appointed, and

following an April 6, 2021 pretrial, the court set trial for May 10, 2021. However, Arrington failed to appear for trial, and the court issued a warrant for his arrest on May 13, 2021. The court also imposed a bond of $10,000 "Cash/Surety Ten Percent."

{¶ 4} Shortly thereafter, a second complaint was filed in the same court, accusing Arrington of having committed assault against a different victim, J.S., on May 7, 2021. This case was designated as Montgomery M.C. No. 2021 CRB 431W, and the crime was a violation of R.C. 2903.13(A), a first-degree misdemeanor. After Arrington failed to appear for a June 2, 2021 arraignment, a warrant was issued for his arrest.

{¶ 5} Subsequently, a third complaint was filed on June 2, 2022, concerning an incident that occurred on May 29, 2022. *See* Montgomery M.C. No. 2022 CRB 534W. The alleged crime involved victim B.R. and was a violation of R.C. 2903.21 (aggravated menacing), a first-degree misdemeanor.

{¶ 6} Arrington was arrested on July 5, 2022, the warrants were recalled, and the three cases were then considered together. Transcript of Proceedings from the Audio Recording System (July 5, 2022) ("Tr.1"), 2.[1] When Arrington was arraigned on the third charge, the court stated that the bond would be $10,000 cash or surety blanket. *Id*. at 3. A pretrial was set for July 11, 2022.

{¶ 7} On July 6, 2022, Shelia M. Marquis of Jeff Brown Bail Bonds posted a $10,000 Blanket Bond Surety for Arrington, and he was processed into electronic home

[1] The transcripts for the court hearings (six in total) have been filed, and the transcript for each hearing is numbered beginning with page one. As a result, we will refer to each hearing transcript as "Tr. 1", and so forth, with the date in parentheses, followed by the page number. In addition, because all three cases were considered together, docket references will be to the third case, M.C. No. 2022 CRB 534.

detention program (EHDP) on July 7, 2022. Arrington appeared in court on July 11, 2022, for a pretrial on all three cases and asked the court to allow him work privileges, to let him go with his wife to prenatal appointments, and to let him go to the hospital when his wife delivered their child. Tr. 2 (July 11, 2022), 3. The court agreed, provided that pretrial services agreed, and Arrington agreed to provide proof of employment. *Id*. at 3-4. A trial date for all three cases was set for August 1, 2022.

{¶ 8} On July 12, 2022, a bail bond receipt was filed with the court, indicating that Brown had posted bail for Arrington on July 6, 2022. The receipt, which was dated July 6, 2022, indicated that the clerk had accepted the amount of bail "as a guarantee that the defendant will appear and answer to the charge as required above." Bail Bond Receipt No. 2201500. Also on July 12, 2022, the Municipal Court's EHDP filed a notice with the court stating that Arrington had initially been placed on lockdown but recently had been granted privileges for work and to attend prenatal visits. However, after he had left the court hearing on July 11, 2022, Arrington drove through two separate "exclusion zones," went to the very edge of another exclusion zone, returned home, and then went to a gas station twice that evening and to a Dollar Store, all without seeking permission. Montgomery County Municipal Courts Electronic Home Detention Program (July 12, 2022), p. 1-2. The program therefore asked the court to terminate Arrington's EHDP condition of bond, issue a warrant, and set a new bond. *Id*. at p. 2.

{¶ 9} On July 14, 2022, the court set a July 25, 2022 status hearing regarding the EHDP violations. On July 18, 2022, Brown filed a copy of the general surety appearance bond that Arrington had signed. Arrington did not appear for the July 25, 2022 status

hearing, and his appointed attorney stated that she had not heard from him. Tr. 3 (July 25, 2022), 1-2. The court stated that it would cancel EHDP, forfeit the bond, and would impose a $25,000 surety bond on all three cases. *Id*. at 2. On July 28, 2022, the court issued a warrant for Arrington's arrest and set bond at $25,000 cash/surety blanket.

{¶ 10} On the same day, the court filed a Notice of Show Cause Hearing, which was sent to Arrington, Lexington National Insurance Corporation, and Brown. It stated that, pursuant to R.C. 2937.36, "you are required to show cause why judgment should not be entered against your company for the penalty of $$25,000 as stated in the recognizance." Notice of Show Cause Hearing (July 28, 2022), p. 1. The court set a September 12, 2022 hearing on the show cause order.

{¶ 11} Arrington failed to appear for trial on August 1, 2022. On August 5, 2022, the court filed an amended notice of show cause hearing, correcting the amount to $10,000 and retaining the same hearing date. On September 6, 2022, Arrington appeared in court, was placed in custody, and the warrants were recalled. The court told Arrington that his EHDP had been cancelled and that he would need to post bond to be released from jail. Tr. 4 (Sept. 6, 2022), 3. That day, the court also set a pretrial for September 12, 2022.

{¶ 12} On September 9, 2022, Marquis filed a motion asking the court to discharge the $10,000 surety bond because Arrington had violated his bond terms and was currently in the Montgomery County Jail. At the September 12, 2022 show cause hearing, Marquis appeared on behalf of the bonding company and asked the court to discharge the bond. Marquis admitted that Arrington had not shown up in court as previously

scheduled and that the bonding company had agreed that Arrington would be there. Tr. 5 (Sept. 12, 2022), 3. However, Marquis also stated that Arrington had appeared in court before the forfeiture hearing. Despite this, the court denied the request to cancel the bond forfeiture and ordered Brown to provide a $10,000 check under the surety agreement within five days. *Id*. at 4 and Order and Entry (Sept. 12, 2022).

{¶ 13} On September 12, 2022, the court also set a $25,000 cash/surety blanket for Arrington and set a September 19, 2022 trial date for all three cases. On September 19, 2022, Arrington appeared in court (he was then in custody), but none of the witnesses showed. Tr. 6 (Sept. 19, 2022), 2. After some discussion, the court stated it would dismiss the cases with prejudice. *Id*. at 7. However, the dismissal entries simply stated that the case in question was dismissed. *E.g.*, M.C. No. 2022 CRB 534W Dismissal Entry (Sept. 19, 2022).

{¶ 14} On December 1, 2022, the court entered judgment against Arrington as principal and Brown as surety, jointly and severally, in the amount of $10,000. Brown timely appealed from the judgment. On May 11, 2023, Brown filed a motion seeking a stay of execution of the trial court's order pending appeal. We denied the motion on May 30, 2023. *See* Order Overruling Motion Pending Appeal (May 30, 2023).

II. Validity of Final Judgment

{¶ 15} Brown's sole assignment of error states that:

> The Trial Court Erred by Entering a Judgment Against Appellant and Prohibiting Appellant from Executing a Bond in the State if the Judgment

Remains Unpaid for at Least Sixty (60) Days after All Appeals Have Been Exhausted in Accordance with O.R.C. 3905.932(J).

{¶ 16} Under this assignment of error, Brown makes two arguments: (1) that it produced Arrington within 60 days after his failure to appear and "[p]recedent has been set by other Ohio courts that if a surety produces a defendant within sixty (60) days they will be released from the terms and conditions of bond"; and (2) that the trial court erred in its judgment entry by referencing R.C. 3905.932(J), which only prohibits sureties from executing bonds in the state on their own behalf. In contrast, R.C. 3905.932(K) is the provision prohibiting sureties from executing bonds in Ohio if a judgment remains unpaid for 60 days after all appeals have been exhausted. Appellant's Brief, p. 9-10.

{¶ 17} In response, the State argues that the relevant date was July 5, 2022, when the court ordered bond of $10,000, and that this "judgment" was subsequently amended to $25,000 on July 25, 2022, when Arrington failed to appear. Appellee's Brief, p. 4. According to the State, the "sixty days" referenced in R.C. 3905.932(K) expired on September 4, 2022, which was sixty days after the bond was ordered to be paid. *Id*. The State therefore asserts that the trial court had the authority on September 4, 2022, to order the bond forfeited, which was "sixty days after all appeals" had "been exhausted." *Id*. at p. 5.

{¶ 18} As a preliminary point, we note that bond forfeiture decisions are reviewed for abuse of discretion. *State v. Guzman*, 2020-Ohio-539, 152 N.E.3d 412, ¶ 7 (3d Dist.), citing *State v. Brown*, 5th Dist. Delaware No. 17-CA-32, 2018-Ohio-1047, ¶ 8. " 'Abuse of discretion' has been defined as an attitude that is unreasonable, arbitrary or

unconscionable." *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp*., 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990), citing *Huffman v. Hair Surgeon, Inc*., 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985). "[M]ost instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary." *Id*. "A decision is unreasonable if there is no sound reasoning process that would support" it. *Id*.

{¶ 19} Under R.C. 2937.22(A), "Bail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave." The statute allows three different forms of bail, including:

> (1) The deposit of cash by the accused or by some other person for the accused;
>
> (2) The deposit by the accused or by some other person for the accused in form of bonds of the United States, this state, or any political subdivision thereof in a face amount equal to the sum set by the court or magistrate. In case of bonds not negotiable by delivery such bonds shall be properly endorsed for transfer.
>
> (3) The written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which shall be known as a recognizance.

{¶ 20} The form involved here is a surety's recognizance bond, as described in R.C. 2937.22(A)(3). *See also* R.C. 2937.281 ("[i]n cases of misdemeanor, the

recognizance may be signed by * * * the accused and surety company * * *"), and Crim.R. 46(B)(1)(c) (which permits courts to accept surety bonds as bail).

{¶ 21} "A surety's recognizance bond is a contract between the surety and the state whereby the state agrees to release the defendant into the surety's custody and the surety agrees to ensure the defendant is present in court on the appearance date." *State v. Dye*, 2018-Ohio-4551, 122 N.E.3d 678, ¶ 25 (5th Dist.), citing *State v. Lott*, 2014-Ohio-3404, 17 N.E.3d 1167, ¶ 8 (1st Dist.), and *State v. Scherer*, 108 Ohio App.3d 586, 591, 671 N.E.2d 545 (2d Dist.1995).

{¶ 22} " 'A final judgment of forfeiture in the case of a recognizance surety bond has two steps: an adjudication of bail forfeiture under R.C. 2937.35 and a bond forfeiture show cause hearing under R.C. 2937.36.' " *Guzman*, 2020-Ohio-539, 152 N.E.3d 412, at ¶ 9, quoting *Youngstown v. Edmonds*, 2018-Ohio-3976, 119 N.E.3d 946, ¶ 13 (7th Dist.).

{¶ 23} R.C. 2937.35 states that "[u]pon the failure of the accused or witness to appear in accordance with its terms the bail may in open court be adjudged forfeit, in whole or in part by the court or magistrate before whom he is to appear." As noted, that occurred here on July 25, 2022, when Arrington failed to appear for the July 25, 2022 status hearing. R.C. 2937.36 provides, in pertinent part that:

> Upon declaration of forfeiture, the magistrate or clerk of the court adjudging forfeiture shall proceed as follows:
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> * * *
>
> (C) As to recognizances the magistrate or clerk shall notify the

> accused and each surety within fifteen days after the declaration of the forfeiture by ordinary mail at the address shown by them in their affidavits of qualification or on the record of the case, of the default of the accused and the adjudication of forfeiture and require each of them to show cause on or before a date certain to be stated in the notice, and which shall be not less than forty-five nor more than sixty days from the date of mailing notice, why judgment should not be entered against each of them for the penalty stated in the recognizance. If good cause by production of the body of the accused or otherwise is not shown, the court or magistrate shall thereupon enter judgment against the sureties or either of them, so notified, in such amount, not exceeding the penalty of the bond, as has been set in the adjudication of forfeiture, and shall award execution therefor as in civil cases. The proceeds of sale shall be received by the clerk or magistrate and distributed as on forfeiture of cash bail.

{¶ 24} As noted, the trial court notified Arrington, Brown, and Lexington of the forfeiture on July 28, 2022, and required them to show cause by September 12, 2022 (49 days later) why judgment should not be entered against them. Several things occurred after that point: (1) according to the court's own docket, on September 6, 2022, Arrington appeared in court, was placed in custody, and the warrants were recalled; (2) on September 9, 2022, Marquis filed a request for discharge, noting that Arrington had violated bond conditions and was in the Montgomery County Jail; (3) Marquis appeared on Brown's behalf at the September 12, 2022 show cause hearing and stated that Brown's

agency had brought Arrington into court on the previous Tuesday (which would have been September 6, 2022); and (4) Arrington remained in custody until he again appeared in court and his case was dismissed on September 19, 2022. *See* Tr. 4 at 2-4 (indicating that Arrington appeared in court and that the bond people were present); Tr. 5 at 2 and 4 (wherein Marquis stated that "they" had brought Arrington into court the previous Tuesday, before the forfeiture hearing); Tr. 6 (Arrington's appearance for trial, at which the cases were dismissed).

{¶ 25} In a similar situation, the Supreme Court of Ohio held that the trial court had erred in entering judgment against a surety for any portion of the bond. *State v. Holmes*, 57 Ohio St.3d 11, 12-13, 564 N.E.2d 1066 (1991). The court commented that:

> R.C. 2937.36(C) provides, by implication, " * * * that a surety may be exonerated if good cause 'by production of the body of the accused or otherwise' is shown." * * * In other words, pursuant to R.C. 2937.36(C) production of the body of the defendant *on the date or dates specified in the notice of default and adjudication of forfeiture* constitutes a showing of good cause why judgment should not be entered against each surety of the defendant.

(Emphasis added.) *Id*. at 13, quoting *State v. Hughes*, 27 Ohio St.3d 19, 20, 501 N.E.2d 622 (1986).

{¶ 26} This is a very clear statement. Consistent with *Holmes*, Ohio appellate districts have held that "[p]roduction of the defendant is good cause why judgment should not be entered on the forfeiture. Entry of forfeiture when the defendant has appeared

prior to the noticed date [for the show cause hearing] constitutes an abuse of discretion." *City of Toledo v. Hunter*, 6th Dist. Lucas No. L-09-1183, 2009-Ohio-6985, ¶ 11. The court also stressed in *Hunter* that "[i]t makes no difference whether the defendant appears as the result of the efforts of the surety or law enforcement." *Id*. at ¶ 10, citing *State v. Williams*, 6th Dist. Lucas No. L-08-1290, 2009-Ohio-1116, ¶ 6. *Accord Edmonds*, 2018-Ohio-3976, 119 N.E.3d 946, at ¶ 15 (noting that "it does not matter whether the defendant was captured by the surety, arrested by law enforcement, or appeared voluntarily"); *State v. Wane*, 12th Dist. Butler No. CA2020-01-010, 2020-Ohio-4874, ¶ 19 (agreeing with the statement in *Edmonds*).

{¶ 27} We have also said that "[o]ne way for a surety to show cause is to produce the defendant within a certain number of days." *State v. McQuay*, 2d Dist. Montgomery No. 24673, 2011-Ohio-6709, ¶ 8. We further noted that at the time of the trial court's ruling, "a surety had no more than thirty days from the mailing of the show-cause notice to bring the defendant before the court to avoid entry of judgment for bail forfeiture. That time recently was extended to sixty days through an amendment to R.C. 2937.36." *Id*. at ¶ 8, fn. 2. In *McQuay*, which involved a request to remit forfeited bail under R.C. 2937.39, we reversed the trial court's denial of remission and remanded the case because the court had failed to consider various factors that Ohio courts have uniformly applied " ' "to reconcile the purposes of both bail and bond remission." ' " *Id*. at ¶ 6, quoting *State v. Delgado*, 2d Dist. Clark No. 2003-CA-28, 2004-Ohio-69, ¶ 15. (Other citation omitted.)

{¶ 28} However, those factors do not apply to R.C. 2937.36(C), which involves whether the "surety may be excused from its duty to pay the penalty by demonstrating

good cause why judgment should not be entered against the surety in the amount of its bond. That showing may consist of producing the 'body' of the accused, or 'otherwise.' " *Scherer,* 108 Ohio App.3d at 590-591, 671 N.E.2d 545, quoting R.C. 2937.36(C).

{¶ 29} In its judgment entry, the trial court stated: "Upon full inquiry into the matter, the court finds that good cause, by production of the body or the accused or otherwise, was not shown." Judgment on Forfeited Recognizance (Dec. 1, 2022), p. 1. This statement was incorrect, as the court's own docket and the testimony at the show cause hearing demonstrated that Arrington was *produced* and *appeared in court before the show cause hearing*. Accordingly, the trial court's entry of judgment on the forfeiture was not based on sound reasoning and was an abuse of discretion.

{¶ 30} Brown also challenged the following statements in the judgment entry:

> ORC Section 3905.932(J) prohibits a surety bail bond agent or insurer from executing a bond in this state if a judgment has been entered on a bond executed by the surety bail bond agent, which judgment has remained unpaid for at least sixty (60) days after all appeals have been exhausted, unless the full amount of the judgment is deposited with the Clerk of Court.
>
> If the judgment remains outstanding more than sixty (60) days after all appeals have been exhausted the Clerk of Courts will not accept any surety bail bonds from said surety until the full amount of the judgment is paid.

Id. at p. 1-2.

{¶ 31} Since the judgment against Brown is being reversed, the court's comments are moot, even if inaccurate. However, we will address this point in order to correct the State's argument, which clearly misapprehends the meaning of "judgment" in R.C. 3905.932(K). As noted, the State contends that a "judgment" was issued on July 5, 2022, when the court ordered a cash or surety bond of $10,000. From this, and the provisions in R.C. 3905.932(K) that refer to a "judgment" that has been unpaid for sixty days, the State argues that when sixty days elapsed after July 5, 2022 (i.e., on September 4, 2022), "that was the date the bail bond company was required to pay the full cash amount because that was 'sixty days after *all appeals had been exhausted*.' " (Emphasis added.) Appellee's Brief at p. 4-5. The State also argues that the court had "authority to order the bond forfeited on September 4, 2022, due to Defendant-Appellant's failure to appear on July 25, 2022, and any subsequent date prior to September 4, 2022." *Id*. at p. 4.

{¶ 32} This analysis is tortured and ignores the statutory process that we have outlined. As noted, when a defendant fails to appear, the court may declare the bond forfeited (as was done on July 28, 2022). However, the process in R.C. 2937.36(C) is then triggered, during which the court issues notice that good cause for the forfeiture must be shown. The date specified in the notice must be no less than 45 days and no more than 60 days after the notice is mailed. If the bond company or agent fails to show good cause on or before that date by, for example, failing to produce the body of the defendant, then the court may issue a judgment requiring the agent or bond company to pay the full amount of the bond. Again, the trial court sent the notice on July 28, 2022, and the date

specified in the notice was September 12, 2022, which was 49 days later.

{¶ 33} While the trial court did file a bond order on July 5, 2022, that had nothing to do with the sixty-day timeline mentioned in R.C. 2905.932(K). R.C. 2905.932 was originally passed in December 2000, and the language now in subsection (K) was originally part of subsection (J). *See* H.B. 730, 2000 Ohio Laws 308, effective October 9, 2001. The statute was later amended, and a new subsection was added, causing former subsection (J) to become (K). *See* Sub.H.B. 300, 2010 Ohio Laws 18, effective March 26, 2010. No further amendments have been made.

{¶ 34} R.C. 3905.932 contains prohibitions that apply to surety bail bond agents and insurers, such as prohibiting them from recommending attorneys to their principals and from soliciting business on the grounds of detention facilities. R.C. 3905.932(A) and (B). The statute was originally enacted "to address concerns regarding the solicitation of bail bonds on courthouse and detention facility grounds," which included rowdiness and fighting in courtroom hallways by bondsmen attempting to solicit customers. *In re Henneke*, 12th Dist. Clermont No. CA2011-05-039, 2012-Ohio-996, ¶ 8 and 25.

{¶ 35} Subsection (J) (cited by the trial court) currently prohibits agents from executing bonds on their own behalf, and subsection (K) prohibits agents and insurers from executing "a bond in this state if a judgment has been entered on a bond executed by the surety bail bond agent, which judgment has remained unpaid for at least sixty days after all appeals have been exhausted, unless the full amount of the judgment is deposited with the clerk of the court." In citing the wrong subsection, the trial court appears to have made a clerical error or was perhaps using an outdated form. The court's intent to

invoke R.C. 3905.932(K) was clear, since it used the language of that subsection.

{¶ 36} However, contrary to the State's position, the plain meaning of "judgment on the bond executed" and exhaustion of "all appeals" clearly refers to forfeiture judgments on a bond and appeals of those judgments. It does not refer to the bond that was set.

{¶ 37} In other words, if a bail bond surety agent or an insurer receives a judgment against it for a sum of money (as here), that party has the ability to appeal from the trial court's judgment, just as any litigant has the right to appeal. "By developing a process of appellate review, states provide litigants with a property interest in the right to appeal. Clearly litigants cannot be deprived of this right without being granted due process of law." *Atkinson v. Grumman Ohio Corp*., 37 Ohio St.3d 80, 85, 523 N.E.2d 851 (1988). Thus, a party has the right to exhaust all potential appeals, including to the Supreme Court of Ohio. In fact, the cases we cited involved *appeals* of forfeiture judgments.

{¶ 38} Once those appeals conclude, for example, by the Supreme Court of Ohio declining review, the agent or insurer must pay the full amount of the judgment within sixty days. If the agent or insurer fails to do so, that party may not execute bonds in Ohio, pursuant to R.C. 3905.932(K), unless the amount of the judgment is deposited with the court.

{¶ 39} R.C. 3905.932 (as well as the prohibitions in that statute) has nothing to do with orders setting bail amounts. On July 5, 2022, the trial court simply issued an order setting the amount of bail required, as is routinely done in criminal cases. At that time, no bail bond agent or insurer was even involved. The only person with the ability to do

anything at that point would have been the defendant, who, if he thought bail was excessive, could have filed a petition for a writ of habeas corpus, which "is the proper remedy to raise the claim of excessive bail in pretrial-release cases." *Chari v. Vore*, 91 Ohio St.3d 323, 325, 744 N.E.2d 763 (2001). *See also DuBose v. McGuffey*, 168 Ohio St.3d 1, 2022-Ohio-8, 195 N.E.3d 951, ¶ 12. Even that procedure is not an "appeal," however, as habeas petitions are "original actions for extraordinary writs." *Brooks v. Kelly*, 144 Ohio St.3d 322, 2015-Ohio-2805, 43 N.E.3d 385, ¶ 6.

{¶ 40} " 'Appeal' means all proceedings in which a court reviews or retries a cause determined by another court, or by an administrative officer, agency, board, department, tribunal, commission, or other instrumentality." R.C. 2505.01(A)(1). Thus, the only kind of "appeals" that occur in trial courts are administrative-type appeals. Appeals do not occur *within* trial court proceedings, other than where matters are referred to magistrates. However, even those are not considered "appeals"; instead, they involve objections to a magistrate's decision. *E.g.,* Civ.R. 53(D)(3)(b); Crim. R. 19(D)(3)(b). Consequently, the State's contention that some type of "appeal" was exhausted in the trial court is simply incorrect. And the rest of the State's position about the relevance of a 60-day period expiring by September 4, 2022, is also incorrect.

{¶ 41} We agree that the trial court had authority to declare a forfeiture – but that was present at the time Arrington failed to appear for the July 25, 2022 status hearing, and the court did declare the bond forfeited at that point. However, the court was then required to follow the procedure in R.C. 2937.36(C) and, under applicable case law, it abused its discretion by awarding judgment against Brown on the forfeiture when

Arrington had been produced and appeared before the date specified in the show cause order.

{¶ 42} Based on the preceding discussion, Brown's sole assignment of error is sustained.

III. Conclusion

{¶ 43} Brown's assignment of error having been sustained, the judgment of the trial court is reversed. This case is remanded to the trial court with instructions to vacate the judgment and award against Brown.

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TUCKER, J. and EPLEY, J., concur.